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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 673

ROBERT J. BROCKER, *Petitioner,*

v.

MARY ANN BROCKER, *Respondent.*

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

HARVEY E. SCHAUFFLER, JR.
1408 Frick Building,
Pittsburgh, Pa. 15219

ARMAND I. ROBINSON,
1155 - 15th Street, N.W.,
Washington, D. C. 20005

Attorneys for Petitioner

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

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In the Counter Statement of the Questions Presented (#1), Respondent assumes as fact that which is not fact. As appears in the Petition, the attorney upon whom the service of the petition alleging contempt was made, was not an authorized representative of the Petitioner's legal rights, and therefore had no power to affect those legal rights.

Again, in (#2), Respondent is assuming that notice and opportunity to be heard in fact existed, and this is a false assumption; to state the question as Respondent does, is to misstate the issue.

In the counter statement of the case Respondent maintains that "One of petitioner's attorneys appeared at the August 30, 1966 hearing and actively participated" and concerning the hearing of September 2,

1966 ". . . One of petitioner's attorneys of record did appear". The above statements incorrectly assume that petitioner had retained two attorneys. The Butler attorney was employed in a very narrow scope, for a specific and limited purpose, and had no authorization to make the appearance on behalf of the Petitioner, to which Respondent refers.

Respondent further states that the Butler attorney, ". . . asked leave to withdraw . . .", and at such time he "assured the court that he *had given* (Petitioner) notice of the September 6, 1966 hearing . . ." The record reveals, however, that the Butler attorney was allowed to withdraw, at the close of the hearing of September 2, 1966. At that hearing the date of September 6, 1966 was set for the new hearing. Thus, Respondent would have this Court believe that, although the Butler attorney only learned of the new date at the close of the September 2, 1966 hearing he also, before withdrawing, notified Petitioner's counsel of the new date. But it also appears that in Respondent's Petition for Extension of Time to File Answer, it is stated that, at the close of the September 2, 1966 proceedings the Butler attorney assured that Court that he *would* give notice to Petitioner's counsel of the new hearing date. Respondent now maintains that leave to withdraw was granted the Butler attorney only after he had assured that court that he *had given* notice to the Pittsburgh counsel. (Italics Supplied).

Argument No. I

It is the position of the Petitioner herein that the Butler attorney was not acting on his behalf at the numerous hearings held in the Butler County Court during the Summer of 1966. The Petitioner retained

one (1) attorney, (Pittsburgh Counsel) and only one was authorized to represent Petitioner. The Butler attorney was employed in order to ask the Butler County Court for an early hearing date on the issue of the custody of the children. As his scope of employment was so limited so was his power and authority. Once that Court decided that an early hearing date could not be scheduled, the Butler Attorney had fullfilled his limited function and any further attempt on his part to represent the rights of the Petitioner is wholly nugatory. This applies mainly to the contentions of Respondent that "service . . . may be made on his attorney". This is a correct statement of the law where the appearance of the attorney was authorized. In the hearings before the Butler County Court, however, the attorney who was served, was not authorized, and therefore service upon him cannot constitute service upon your petitioner.

Argument No. II

Respondent suggest that petitioner could have asked the Butler County Court for a modification of the Contempt Order, if petitioner found that he could not comply with the Order within the prescribed five (5) day period. This is not an issue before this Honorable Court. What may have or could have been done is not a pertinent point of inquiry. Petitioner was fined $25,000.00 because he did not comply with an Order of the Butler County Court, when it was, in fact, impossible for him to comply. Respondent fails to point out that the Order of the Butler County Court was not received through the mails until the five (5) days in which petitioner could have perged himself had expired. The record only shows that the Order was only

mailed, on September 7, 1966, and no record exists as to when it was received until after the five (5) days had elapsed.

Argument No. III

Respondent states that custody of the children was granted to the Petitioner by the Ohio Court on September 12, 1968. That date is incorrect, and if your Petitioner has previously suggested that the Order was granted on the above date, he now says that it is in error. The Order was filed by the Court of Common Pleas, Division of Domestic Relations, Juvenile Division of Mahoning County, on September 12, 1966. Therefore, on March 15, 1968, the date on which the Supreme Court of Pennsylvania filed its opinion in this case, the Ohio custody Order was in full effect.

CONCLUSION

This case is one of public importance and interest, in that it involves the denial of rights to a citizen which the constitution protects and guarantees to all citizens. This Honorable Court should allow the request for a Writ of Certiorari for the foregoing reasons.

Respectfully submitted,

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Pittsburgh, Pa. 15219

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1155 - 15th Street, N.W.,
Washington, D. C. 20005

Attorneys for Petitioner